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PROMOTION AND PROTECTION OF HUMAN RIGHTS

HUMAN RIGHTS DEFENDERS

Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders in accordance with Commission resolution 2000/61

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Executive summary

This is the first report presented by the Special Representative of the Secretary-General on human rights defenders, Ms. Hina Jilani. It is submitted pursuant to Commission resolution 2000/61. The report contains the initial considerations on how the Special Representative perceives her mandate, the methods of work and her activities and a brief summary of urgent appeals and communications to and from Governments followed by concluding remarks. With regard to country situations, the Special Representative sent seven urgent appeals and four communications between the time she initiated her work at the end of September 2000 to the beginning of December 2000. Amongst those, five were sent jointly with other thematic mechanisms, in particular the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on violence against women.

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter "the Declaration") will form the basis in determining and developing the scope of the mandate. Articles 3 and 4 of the Declaration define the juridical framework for the implementation of the mandate. The Special Representative will carry out her mandate in a spirit of cooperation and will collaborate with existing special procedures, United Nations treaty bodies, United Nations agencies and other organizations, regional human rights mechanisms and non-governmental organizations.

The methods of work adopted by the Special Representative are largely based on those applied by other thematic mechanisms, with due regard for the specificity of her mandate. Communications will consist of urgent appeals and letters of allegation transmitted to Governments; in cases of particular gravity she may also issue a press statement, which would follow a communication addressed to the Government(s). She will undertake country visits and field missions, drawing upon the existing protocols and criteria insofar as they apply to her mandate. The Special Representative will make herself available on the widest possible basis to the greatest extent of her abilities and will establish direct contact with Governments, relevant authorities and institutions as well as with the above-mentioned organizations.

In addition to the seven urgent appeals and four communications to Governments, the Special Representative also sent a note verbale to permanent missions in Geneva and non-governmental and other organizations asking them to provide any information relevant to her mandate. Furthermore, she has held consultations with the Secretary-General, the High Commissioner for Human Rights and her Office as well as with Governments and NGOs.

The Special Representative concludes her report with reference to issues of concern regarding human rights defenders. The recurrent problem in the protection of human rights defenders remains the lack or inefficient implementation of the normative frameworks. There have already been a considerable number of communications which allege serious human rights

violations targeting human rights defenders, from which no region is free. The risks faced by human rights defenders are serious, as evidenced by the number of defenders who were the subject of urgent appeals and communications from other thematic mandates over the last two years. The measure of the success of the mandate will be the security that this mechanism provides for those acting for the promotion and protection of human rights. In this regard, the Special Representative will recommend effective strategies to better protect human rights defenders and present her recommendations to the Commission on Human Rights and the General Assembly in her subsequent reports.

Introduction

1. By its decision 1985/112 of 14 March 1985, the Commission on Human Rights established an open-ended working group to draft an instrument on human rights defenders. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter "the Declaration") was adopted, by consensus, by the General Assembly in its resolution 53/144 on 9 December 1998, following 13 years of a negotiation process involving Member States and non-governmental organizations (NGOs).

2. The consensus of the Member States in adopting the Declaration represented a clear commitment to acknowledge, promote and protect the work and rights of human rights defenders around the world. The recognition by the international community of its responsibilities in this area was rightly considered by many as a turning point in improving the protection of human rights defenders. By subscribing to the principles that the Declaration underpins, States acknowledged the important role of international cooperation in protecting individuals, groups and associations in their work which contributes to the effective elimination of all violations of human rights and fundamental freedoms.

3. Given the consensus of the international community in recognizing the legitimacy of the important work of human rights defenders, the continuous reporting of violations of the rights of human rights defenders in many parts of the world was considered to be a matter of serious concern. Several United Nations organs have in the past raised the issue of human rights defenders around the world. Reference should be made inter alia to General Assembly resolution 54/170 in which the Assembly noted with deep concern that, in many countries, persons and organizations engaging in promoting and defending human rights were facing threats, harassment and insecurity as a result of those activities. The Subcommission on the Promotion and Protection of Human Rights also expressed concern over the situation of human rights defenders around the world. In resolutions 1998/3 and 1999/3, the Subcommission condemned the murders of 17 named human rights defenders and requested the High Commissioner for Human Rights to undertake inquiries about the security of 18 other named individual human rights defenders. In a report to the Subcommission (E/CN.4/Sub.2/2000/5), the High Commissioner provided information on the individuals concerned.

4. In 1999, the Commission on Human Rights and the General Assembly encouraged Member States to implement the Declaration and requested the Secretary-General to report on the extent to which the Declaration was being implemented[1]. Interesting discussions followed arguing in favour or against the establishment of a specific mandate.

5. To promote and achieve effective implementation of the Declaration, the need for establishing a special mechanism for reporting on and promoting the situation of human rights defenders as well as on possible means to enhance their protection was felt most pertinent by many delegations. The mechanism was considered as the logical next step by the international community in giving effect to the Declaration aiming to protect the existence and activities of human rights defenders; it would in turn reinforce concerted efforts, at both national and international levels, in promoting and protecting human rights.

6. Many Governments agreed that the new mechanism, by giving effect to the Declaration, would enhance national and international awareness of problems involving violence and oppression against human rights advocates and activities. This would also draw Governments' attention to their obligations to promote and protect human rights, in particular those of human rights defenders. Additionally, a new mechanism to promote and to implement the Declaration was much sought after and welcomed by non-governmental organizations and members of both national and international civil societies. They considered the mechanism an important and necessary step towards greater recognition and protection of the work of human rights defenders worldwide.

7. There were, however, concerns expressed by other delegations over the fact that a new mechanism might duplicate the work of existing mechanisms and be a source of confusion, since the latter already dealt with issues relating to the protection of human rights defenders. Additionally, it was stated that a new mechanism might draw on already limited resources available to existing mechanisms and might thus divert much needed resources from them.

8. After extensive discussion, the Commission on Human Rights, by its resolution 2000/61, requested the Secretary-General to appoint, for a period of three years, a special representative who shall report on the situation of human rights defenders in all parts of the world and on possible means to enhance their protection in full compliance with the Declaration. This request was endorsed by the Economic and Social Council in its decision 2000/220.

9. Ms. Hina Jilani (Pakistan) was appointed Special Representative by the Secretary-General. In the present report to the Commission, the Special Representative will share her initial considerations as to how she intends to conduct her mandate, how she perceives her mandate and the activities foreseen under this mandate, and make initial comments on issues of particular relevance to the carrying out of her mandate. Attaching particular importance to the arguments put forward in the discussion of the new mandate, it is the intention of the Special Representative to establish cooperation with all relevant United Nations mechanisms and initiate fruitful and comprehensive cooperation with States and non-State actors.

I. THE MANDATE

10. The mandate of the Special Representative of the Secretary-General on human rights defenders is contained in Commission resolution 2000/61. In paragraph 3 of this resolution, the Special Representative is requested to report on the situation of human rights defenders in all parts of the world and on possible means to enhance their protection in full compliance with the Declaration. The main activities of the Special Representative shall be:

(a) To seek, receive examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms;

(b) To establish cooperation and conduct dialogue with Governments and other interested actors on the promotion and effective implementation of the Declaration;

(c) To recommend effective strategies better to protect human rights defenders and follow up on these recommendations.

11. The Special Representative is also requested to submit annual reports on her activities to the Commission on Human Rights and to the General Assembly and to make any suggestions and recommendations enabling her better to carry out her tasks and activities (para. 6).

12. In the same resolution, the Commission urged all Governments to cooperate with and assist the Special Representative in the performance of her tasks and to furnish all information in the fulfilment of her mandate upon request (para. 4).

Scope of the mandate

13. The Declaration forms the foundation for determining and developing the scope of the mandate, and for any action or initiatives undertaken by the Special Representative. In the application of the mandate to human rights defenders, the Special Representative will draw, in particular, upon article 1[2] read with the fourth paragraph of the preamble to the Declaration,[3] and will be guided by the Charter of the United Nations and the Universal Declaration of Human Rights. The United Nations international human rights instruments will constitute a more precise legal background against which the Special Representative will consider her mandate. In particular, the International Covenant on Civil and Political Rights (particularly its articles 2 (3), 12, 17, 19, 21, 22), the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture an Other Cruel, Inhuman or Degrading Treatment or Punishment (particularly its article 13), the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Freedom of Association and Protection of the Right to Organize Convention, (No. 87) of the International Labour Organization.

14. Additionally, the following conventions or declarations will provide a relevant framework for the implementation of the Declaration: the Vienna Declaration and Programme of Action, the Beijing Declaration and Platform for Action, Women 2000: Gender Equality, Development and Peace for the Twenty-first Century (known as "Beijing plus 5"), the Declaration on the Elimination of Violence against Women, the Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, the Basic Principles on the Role of Lawyers, the Basic Principles on the Independence of the Judiciary, the Declaration on the Protection of All Persons from Enforced Disappearance, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The Special Representative wishes to point out that she considers all activities in relation to human rights and fundamental freedoms recognized in international human rights instruments and commitments, including the Declaration, as activities for the promotion, protection and realization of human rights. She is also conscious of the fact that certain provisions of the aforementioned

international instruments are of particular relevance to the protection and promotion of the rights and fundamental freedoms of human rights defenders considered either as individuals or as groups and/or organs of society. This is of specific importance, since the Declaration addresses the protection and promotion of human rights defenders according to this particular distinction. She will encourage, wherever and whenever possible, cooperation with relevant bodies entrusted with monitoring the implementation of the said instruments and build on their experience.

15. It is, however, essential to bear in mind that, prior to Commission resolution 2000/61, no particular mandate had been tailored to focus on specific rights or freedoms for human rights defenders. A number of the thematic mandates established by the Commission have, within their mandate, responded to particular forms of violations against human rights defenders. A summary of such recent information is provided in section IV below. The Special Representative takes note with appreciation of such action and looks forward to developing a mutually supportive and cooperative framework for joint action.

16. Nevertheless, it should be pointed out that initiatives taken by different thematic mechanisms had to remain within the strict limits of the juridical framework within which the special procedure concerned was operating. This afforded less scope for a comprehensive approach to the implementation of rights recognized in the Declaration. Under the mandate of the new mechanism, those engaged in the promotion and protection of human rights are the focus of protection. This allows the Special Representative not only to respond to the different forms of violations to which defenders are subjected, but also take into consideration situations and conditions that threaten or impede the work or security of defenders.

17. The Special Representative considers that the extent of her responsibility will have to be considered with this distinction in mind and in the light of the nature and extent of the alleged human rights situation under reference. The following considerations would be relevant for determining the role of the Special Representative:

(a) When violations of rights of human rights defenders, as individuals or groups of individuals, occur as a consequence of events of a wider dimension (for instance an internal conflict), it is legitimate to consider that other thematic or geographic procedures should have a leading role to play. In such cases, the Special Representative will, in close coordination with them, deal with the consequential aspects of the said violations or situation for the implementation of the Declaration and the protection of human rights defenders;

(b) When a situation occurs where rights of human rights defenders, as individuals or groups of individuals, are specifically targeted, it is legitimate to consider that the Special Representative will have to play the leading role. Obviously, such a situation may take the form of specific violations of human rights which are the subject of other more specific thematic or geographic mandates of the Commission. Accordingly, the concerned procedure would have to focus on the consequential aspect of such a situation in close concurrence and cooperation with the Special Representative.

The Special Representative intends to discuss this matter further with other mandate-holders at the next annual meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the Commission on Human Rights.

18. For the effective implementation of her mandate, the Special Representative deems it necessary to include in the scope of inquiry conditions in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons are able to enjoy these rights in practice (article 2 of the Declaration).

19. Article 9 of the Declaration[4] affirming the basic right of everyone to benefit from an effective remedy in the case of any violation of human rights, and to be protected in the event of such violation must be read in the context of the applicable international human rights standards. Importantly, article 9 (3) of the Declaration is non-exhaustive, using the term "inter alia", and applies to everyone, "individually" and "in association with others", meaning that "effective remedies" in the context of the Declaration must be read broadly.

20. Furthermore, the concept of effective remedies, as with all guarantees referred to in the Declaration, cannot be interpreted in any way that restricts or impairs the applicability of the relevant international human rights standards.[5]

21. The mandate to seek information allows the Special Representative to request invitation from Governments to conduct field missions to countries where the situation so demands, based on the information received by her. The Special Representative will attach particular interest in developing a series of practical guiding and non-binding criteria that would allow her to determine the situations in which a field mission may be warranted. Among those issues that she will have to take into account are:

(a) The priority attention which should be given to cases where the alleged perilous situation can be addressed more effectively under her mandate;

(b) The rights or freedoms of human rights defenders which are not the subject of any other instruments or mandates (e.g. freedom of association, freedom of movement, etc.);

(c) Cases where the authorities have expressed some prima facie interest in developing constructive working relations with her mandate; and

(d) The need to maximize the use of resources and time.

22. "Other interested actors" in paragraph 3 (b) of resolution 2000/61 may be interpreted to include individuals, groups and agencies allegedly involved in the violation of human rights, or those whose cooperation the Special Representative may seek for the protection of human rights defenders, or for the improvement of conditions that threaten the security of defenders.

23. Initiatives, actions and strategies for the prevention of conditions resulting in harm to defenders is an important aspect of this mandate. In this respect the scope of activities under this mandate extends to seeking advice and information on good practices and recommending technical assistance as a measure for improvement of the situation of human rights affecting the work of defenders. This will require close cooperation with the team at the Office of the High Commissioner for Human Rights (OHCHR) that deals with technical cooperation and the OHCHR field presences with a view to formulating such projects as might be of relevance in any given situation.

24. States have the primary responsibility and duty to protect, promote and implement human rights. Nevertheless, groups and individuals, whether armed or otherwise, who violate or threaten the rights recognized by the Declaration also have an obligation to respect them. This respect can be ensured by the adoption of the necessary legal policies and administrative measures for the effective protection of human rights defenders by States within whose jurisdiction these groups operate. The Special Representative therefore regards communications and dialogue with Governments as an important aspect of the mandate, regardless of the source of the violation or threat of violation.

Juridical framework

25. Articles 3 and 4 define the juridical framework for the implementation of the Declaration. Article 3 provides that:

> "Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted."

Article 4 provides that:

> "Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field."

26. Articles 3 and 4 must be read together with the Declaration's preamble which reaffirms and reiterates the importance of the Charter of the United Nations as well as that of international human rights law. It also emphasizes (in the seventh paragraph of the preamble) that "the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State" (see also article 2 of the Declaration), but that "the absence of international peace and security does not excuse non-compliance" (fifth paragraph of the preamble).

27. Consequently, articles 3 and 4, read in the light of the Declaration's preamble, require the Special Representative to place primary emphasis on domestic law, but in a way that does not restrict or derogate from the application of pertinent international human rights standards. The Special Representative shall therefore take full account of the domestic legal context while reaffirming the applicability and integrity of international human rights norms. This implies further that the Special Representative's mandate is intended to comprehend fully the applicability of international human rights norms to the domestic legal context, not only in seeking to identify shortcomings and problem areas, but also in recommending constructive solutions at the domestic, regional and international levels.

28. In this context, it is of particular importance to note that, in its consideration of reports submitted by States parties under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Committee against Torture considers whether the pertinent domestic law of the country under examination is consistent with the Declaration.

29. Accordingly, the Special Representative takes note of article 3 of the Declaration and, in her assessment and evaluation of a situation, will give due regard to domestic law that is consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights. She is also fully conscious of article 4 of the Declaration and will be guided in her initiatives by provisions of human rights instruments and the standards laid down therein.

Cooperation with existing special procedures

30. As recalled earlier, prior to the establishment of this new mandate, there was no specific international mechanism providing effective protection to human rights defenders whose life, physical integrity, safety and freedoms might have been attacked owing to their work for the promotion and protection of human rights. United Nations bodies and the special procedures and working groups of the Commission on Human Rights had therefore taken a stand regarding instances of specific violations of the rights of human rights defenders. In the light of the foregoing, the Special Representative intends to build on these experiences and to discuss with other existing special procedures possible forms of cooperation.

31. At the 1999 meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Commission on Human Rights, it was noted that while all the existing mechanisms were committed to cooperating among themselves on the protection of human rights defenders, the nature of the problem was not such that it could be covered satisfactorily by them alone in the discharge of their specific mandates. Accordingly, the new situation that has emerged from the establishment of this mandate and the guidelines proposed above will need to be discussed at the next meeting of the special procedures in 2001. The Special Representative is pleased to note that this will be done under a separate agenda item.

32. Indeed, it is her strong view that the creation of the new mandate does not mean that the other special procedures should henceforth refrain from dealing with issues involving human rights defenders. Several special procedures, as indicated earlier, have devoted a section of their reports to this area, which is essential for presenting the different dimensions of the subject of their mandate. The Special Representative is sure that this will continue, and will substantiate the need for the initiatives she takes under her mandate.

Cooperation with United Nations treaty bodies

33. The Special Representative appreciates the fact that, in recent years, the United Nations treaty bodies, through their respective mechanisms, have repeatedly expressed concern about intimidation and harassment, in particular by government officials, of journalists and human rights activists, including members of human rights non-governmental organizations, who have

been subjected to prosecution, fines and imprisonment. Treaty bodies were, however, limited in their consideration of the situation of human rights defenders by their conventional obligation to deal only with the situation prevailing in States parties.[6]

Cooperation with the specialized agencies and other organizations

34. In carrying out her mandate, the Special Representative intends to explore the possibilities of collaboration with other United Nations agencies which, in their respective fields of competence, have established procedures in promoting and protecting the fundamental rights and freedoms of human rights defenders.

35. The Special Representative will pay particular attention to procedures developed within the specialized agencies which are of direct or indirect relevance to the protection and promotion of the rights set forth in the Declaration. In particular, the Special Representative will link with the International Labour Organization (ILO) in its efforts aiming at protecting labour rights, particularly the rights of trade unionists.[7]

36. The Special Representative will also endeavour to open avenues of cooperation with United Nations bodies and agencies such as the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Fund for Women (UNIFEM), the United Nations Children's Fund (UNICEF), the World Food Programme (WFP) and the World Health Organization (WHO) or other organizations such as the International Committee of the Red Cross (ICRC). Indeed, as protectors of refugees and humanitarian workers who, in some appropriate cases, are performing the roles of human rights defenders, these agencies will offer invaluable sources of information and opportunities for experience exchange. The Special Representative will also look forward to cooperating with the United Nations Development Programme (UNDP) and benefit from its assistance in carrying out her mandate.

Cooperation with regional human rights mechanisms

37. The Special Representative will seek to establish a working relationship with regional intergovernmental human rights mechanisms, including those under the Organization of American States, the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE) and the Organization of African Unity, and to exchange information with their secretariats and experts on situations involving human rights defenders. This will allow her also to develop a regional approach to the problems encountered by human rights defenders and to recommend regional strategies. In particular, following the precedent of existing regional protection mechanisms or initiatives such as *medidas cautellares* within the Inter-American Commission on Human Rights or the creation of Passports for Freedom for Human Rights Defenders within the European Union, the Special Representative will seek the active cooperation of these bodies in order to devise regional strategies for enhancing the protection of human rights defenders and for better implementation of the Declaration, and intends to explore the possibilities of initiating other regional protection measures in compliance with her mandate.

Cooperation with NGOs

38. The Special Representative recognizes the importance of the work of human rights NGOs in the creation of this mandate and their support for establishing this mechanism. NGOs would be the major source of information in the work of the Special Representative. The legal and normative framework for the mandate can be best developed in consultation with NGOs, many of which have already established programmes and developed networks for the protection of human rights defenders. The Special Representative also hopes to establish links with human rights centres and institutes and to draw upon their expertise for developing the scope of the mandate.

II. METHODS OF WORK

39. In devising methods of work for the implementation of her mandate the Special Representative is aware that the protection of human rights defenders has multiple dimensions and would require varied actions to obtain the best results. The primary concern in the methodology would be to ensure wider accessibility, prompt response, and initiatives that are effective. Wide dissemination on the establishment of the mechanism would be important for accessibility of the mandate. In this regard, publicizing the Declaration as a part of human rights education should be considered.

40. The Special Representative understands the need to maintain the independence and credibility of the mandate. It would therefore be necessary to employ methods for verification of information through a network of sources. Many such networks already exist and are well respected for their integrity and reliability. The Special Representative will establish working methods for the most efficient discharge of her mandate. She also intends to explore how treaty bodies and other non-treaty mechanisms have regarded the Declaration in the execution of their mandates and to build upon methods devised by them for the implementation of the Declaration.

41. The mandate of the Special Representative implies a combined approach that considers the general situation of human rights defenders around the world as well as concrete incidents and individual cases. Therefore, the work of the Special Representative will involve both the study of phenomena related to human rights defenders and action on concrete incidents and cases.

42. The methods of work already adopted by the Special Representative are largely based on those applied by other thematic mechanisms, with due regard for the specificity of her mandate. In particular, she takes note of the methods of work used by the Special Rapporteur on extrajudicial, summary or arbitrary executions (see E/CN.4/1994/7, paras. 13-67) and the Special Rapporteur on torture (see E/CN.4/1997/7, annex).

43. The Special Representative decided to adopt the urgent appeal procedure when the cases involved are of particular gravity. An urgent appeal is made on the basis of information received by the Special Representative and expresses concern over a case or a situation involving human rights defenders and human rights organizations. When making a determination as to whether an urgent appeal should be sent, a certain number of factors will be taken into account, in particular whether the source of information is reliable and the information consistent. Corroborative or

supplementary information will also be sought from sources other than the alleged victims or their representatives. The urgent appeal, which is essentially preventive, is directly addressed to the Ministry for Foreign Affairs or other relevant department of the Government of the country concerned.

44. When a situation in a particular country is of particular concern and gravity, the Special Representative will issue a press statement to inform the international community of the situation or case. The press statement will follow a communication addressed to the Government(s), and will be based on issues taken up with the Government(s) in that communication.

45. The Special Representative also decided to transmit to Governments letters, on the basis of credible and reliable information received, alleging violations of the rights and fundamental freedoms of human rights defenders. Cases of particular incidents/situations regarding freedom of association in general will also be transmitted.

46. The communications - urgent appeals and allegations - shall be transmitted to Governments, which shall be asked to reply after having carried out the appropriate inquiries so as to provide the Special Representative with the fullest possible information.

47. The dialogue established with Governments by the Special Representative and the transmission of allegations concerning their countries in no way implies any kind of accusation or value judgement on the part of the Special Representative. Communications with Governments are intended to draw their attention to incidents, situations and conditions that require action or restraint on the part of the State for the protection of human rights defenders. The Special Representative is eager to pursue a constructive approach for the improvement of the situation of human rights defenders together with the Government(s) concerned.

48. Country visits and field missions, which imply the consent of the Government concerned, will be an integral part of the Special Representative's work. She will draw upon the already existing protocols and criteria for such visits and missions insofar as they apply to her mandate, and expects to develop additional criteria where necessary for better implementation of her mandate.

49. The Special Representative considers the follow-up of cases and country visits to be an important aspect of her mandate. In this regard, where responses received from Governments to the communications sent are considered unsatisfactory by the Special Representative, she will seek additional information from the source/victim by transmitting to them the content of the Government's response. The cases/situations will continue to be followed by the Special Representative until a satisfactory response is received. With regard to country visits, the Special Representative will periodically remind the Governments concerned of the observations and recommendations formulated in the respective reports, requesting information on the steps taken to implement them.

50. As a general rule, the Special Representative will make herself available on the widest basis to the greatest extent of her abilities. She will seek to establish - and has already taken steps in this direction - direct contact with Governments, relevant domestic authorities,

intergovernmental organizations, relevant institutions, international, regional and national non-governmental organizations, academic institutions and individuals. Owing to the nature of her mandate, regular contact will be maintained with NGOs in order to seek information from them. In this regard, specific guidelines - similar to the ones developed by other mechanisms - on how to submit information to the Special Representative will be elaborated in the near future and will be accessible on the OHCHR Web site.

51. The Special Representative would like to take advantage of the existing field presences of the Office of the High Commissioner for Human Rights throughout the world. In this regard, she will not only seek information from them but also consult them concerning concrete cases of violations and situations. For any communication sent to the Government of a country which has a field presence, a copy will systematically be sent to the field office concerned. In this regard, the Special Representative considers cooperation with OHCHR to be particularly important to broadening the impact of her work. She would like OHCHR, in the elaboration of its technical cooperation programmes, to take into account the recommendations she would make on the countries concerned. The Special Representative will also make herself available for any consultations in this regard.

52. In addition, the Special Representative considers research to be an important component of the mandate in elaborating an effective strategy to protect human rights defenders. Priority should be given to studies which would increase knowledge about repressive trends, measures and practices affecting human rights defenders. A first study should be undertaken on national legislation on freedom of association and how it can be used to affect, negatively or positively, the promotion of human rights and the work of defenders. To this end, the Special Representative will seek support from and collaboration with any interested institute/foundation/university in order to initiate research in areas relevant to the development of the mandate.

III. ACTIVITIES

53. The Special Representative initiated her work at the end of September 2000. Owing to the large number of allegations she has already received providing details of incidents and cases of violations of the rights of human rights defenders, the Special Representative has begun to transmit summaries of these cases to the Governments concerned. In this regard, she sent seven urgent appeals to the following countries: Columbia (1), Guatemala (1), Indonesia (3) and Tunisia (2). In addition, the Special Representative sent four communications to the following countries. Indonesia (2), Iran (Islamic Republic of) (1) and Malaysia (1). During this period the Special Representative joined with the Special Rapporteur on torture to send two urgent appeals, to Indonesia. The Special Representative also joined with the Special Rapporteur on extrajudicial, summary or arbitrary executions to send urgent appeals in two cases, to Guatemala and Indonesia respectively. As well, one communication was sent jointly with the Chairman-Rapporteur of the Working Group on Arbitrary Detention (Indonesia), the Special Rapporteur on violence against women (Indonesia) and the Special Rapporteur on torture (Indonesia).

54. In accordance with paragraph 3 (a) of resolution 2000/61 requesting the Special Representative to seek, receive, examine and respond to information on the situation of human

rights defenders, a note verbale dated 10 October 2000 was sent to all permanent missions to the United Nations and the United Nations Office at Geneva to request any information deemed relevant to her mandate.

55. Replies were received from the Governments of Cuba, Kuwait and Azerbaijan. The Government of Cuba sent a response to the Special Rapporteur on 17 November 2000 explaining that it opposed the proposal to appoint a special representative on human rights defenders because the countries promoting the initiative had "upset a delicate balance reached on the subject". The Government expressed several reservations and apprehensions regarding the implementation of the mandate. The Special Representative appreciates the openness with which the Government of Cuba expressed its opposition to the creation of the mechanism, and availed herself of this opportunity to initiate a dialogue with the Government on a clearer understanding of the mandate. To the extent that the response of the Government raised questions of principle regarding the mandate, the Special Representative decided to reply. The communication received from the Government of Cuba and the response of the Special Representative are annexed to this report.

56. In a communication dated 23 November 2000, the Government of Kuwait expressed its support of the mandate, since the defence of human rights is a praiseworthy act that deserves commendation. However, they noted that such acts should be undertaken through authorized channels and within the limits of the law and national sovereignty by State-recognized national bodies. In this connection, the State of Kuwait has attached great importance to human rights law in its legislation, internal regulation and its Constitution, which prohibits various violations of human rights and establishes the principle that there is no crime or punishment except as defined by law. Under the Constitution, any individual has the right to petition the public authorities and everyone has a guaranteed right to legal redress. This applies equally to individuals and groups defending human rights seeking protection from acts of violations to which they were subjected while discharging their functions, or redress and amends for any damage suffered. The response of the Government of Kuwait is available at OHCHR.

57. In its communication dated 12 December 2000, the Government of Azerbaijan set out the methods by which it safeguards the rights and freedoms of individuals and citizens, and confirmed that the international treaties to which Azerbaijan is a party are an integral part of the Azerbaijani legal order. Azerbaijan has taken several human rights measures including the planned institution of an ombudsman or commissioner for human rights, the abolition of capital punishment and the reinstatement of presidential pardons. Further, a new criminal code was introduced and legislation regulating the police, the procurator's office, the legal profession and notaries was adopted. In addition, measures are being taken to ensure freedom of the press, freedom of non-governmental organizations, the facilitation of a trade union movement, the increased participation of women in public affairs and the amelioration of the situation of refugees and forcibly displaced persons.

58. By communication dated 12 October 2000, requests for information were also sent to the main international and regional non-governmental and other organizations. In response to this request, the Special Representative has received introductory and congratulatory messages from the following organizations: African Centre of Technology (6 December 2000), Asia Pacific Forum of National Human Rights Institutions (6 November 2000), Asia-Pacific Human Rights

Information Center (24 October 2000), Centre for Policy Research (30 October 2000), United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (18 October 2000), International Council of AIDS Service Organizations (5 December 2000), Medical Rehabilitation Center for Torture Victims (24 November 2000), National Organization of Defenders for Human Rights Activists (22 September 2000).

59. The Special Representative would like to thank all the Governments and non-governmental organizations that replied to her notes verbales.

60. After her appointment in August, the Special Representative held consultations with the Office of the High Commissioner for Human Rights in September. She had the opportunity to meet with the High Commissioner and discuss conceptual and practical issues connected with the implementation of the mandate. The High Commissioner's commitment to the cause of human rights defenders and her support for the new mechanism was apparent in the help and guidance she provided to the Special Representative in taking practical steps for initializing her work. The Special Representative was also able to meet with and be briefed by thematic and geographic experts in OHCHR, who helped her become more familiar with the United Nations human rights system and the mechanisms working within it.

61. The Special Representative held consultations in New York at the end of October 2000. She met with the Secretary-General to discuss the mandate entrusted to her, at which time the Special Representative outlined her understanding of the mandate and some of the issues of special concern to her regarding the situation of human rights defenders. The Special Representative is greatly encouraged by the Secretary-General's interest in the mandate and will keep the Office of the Secretary-General informed with regard to the development of her mandate and any issues on which she may require his guidance or support, for the better implementation of the mandate.

62. The Special Representative also initiated contact with Governments through an informal dialogue with delegations at the Third Committee held on 31 October 2000 during the fifty-fifth session of the General Assembly in New York. While in Geneva in December 2000, she met with regional groups of the Commission on Human Rights.

63. Since September, consultations with NGOs have also been an important part of her activities. She met with international NGOs to discuss with them the potential scope and development of the mandate and to receive briefings on the situation of human rights defenders. In this regard, the Jacob Blaustein Institute hosted a seminar on 20 September 2000. The International Council for Human Rights Policy set up consultations with various other NGOs on 19 October 2000. On 1 and 2 December 2000, International Service for Human Rights held a seminar on the mandate as well. During this particular meeting, the Special Representative had the opportunity to discuss cooperation with other thematic mechanisms. In this regard, the Special Representative sent a letter on 23 October 2000 to special rapporteurs and chairpersons of working groups inviting their cooperation and seeking their advice, to which the Special Representative continues to receive very encouraging and positive responses.

IV. COUNTRY SITUATIONS

64. This section contains brief summaries of urgent appeals and communications to and from Governments, along with the observations of the Special Representative. In order to leave enough time for Governments to respond, only the communications sent before 1 December 2000 are included in the report.

Colombia

Communication sent

65. On 12 October 2000, the Special Representative sent an urgent appeal concerning the disappearance on 6 October 2000 of Angel Quintero and Claudia Patricia Monsalve Pulgarín, two members of the Asociación de Familiares de Detenidos-Desaparecidos (ASFADDES), in Medellín. It has been reported that Mr. Quintero had received threats prior to his disappearance as a result of his investigation of the disappearance of Ruben Usaga Higuita, Wilson Usaga Higuita and Arvey Poso Usaga on 25 August 2000. According to the information received, Ms. Monsalve Pulgarín had been working on her brother's disappearance in 1995 to which police officers have allegedly been linked. In her communication, the Special Representative expressed concern regarding the threats that members of ASFADDES had allegedly received over the last few months.

Communications received

66. The Government of Colombia sent two letters of reply, on 24 October and 30 October 2000, in which it stated that an investigation into the disappearance of Mr. Quintero and Ms. Monsalve Pulgarín had been opened on 10 October 2000 by the Cuerpo Técnico de Investigaciones de Medellín.

Observations

67. The Special Representative thanks the Government of Colombia for its prompt replies but continues to be concerned about the safety of these two human rights defenders who, at the date of the finalization of this report, are still missing.

Guatemala

Communication sent

68. On 24 November 2000, the Special Representative, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal concerning death threats to which the workers of the National Human Rights Procurator (Procuraduría de Derechos Humanos) of Sololá have been subjected following the opening of an investigation into the murder of Teodoro Saloj. Concerns were expressed for the safety of the workers, especially as they had announced on 6 November 2000 that the results of their investigation pointed to the involvement of nine agents of the Policía Nacional Civil.

Observations

69. No reply from the Government has been received so far.

Indonesia

Communication sent

70. On 2 November 2000, the Special Representative sent an urgent appeal jointly with the Special Rapporteur on torture with regard to the arrest of M. Yusuf by the Indonesian security forces on 1 November 2000 in East Aceh. His arrest was reportedly connected to his participation in the organization of the People's Congress for Victims of Human Rights Violations in Aceh, which was to take place from 4 to 6 November. M. Yusuf was believed to be held without charge and fears were expressed that he was at risk of torture as he was detained incommunicado at an unknown location.

71. On 7 November 2000, the Special Representative transmitted a communication requesting information concerning an increase of acts of intimidation by the military and the police against human rights defenders in the province of Aceh. The Special Representative expressed concern, in particular, with regard to: the assassination on 16 September 2000 in Banda Aceh of Safwan Idris, the rector of the Al-Raniry State Islamic Institute and a human rights activist; the killing of Jafar Siddiq Hamzah, a prominent human rights lawyer and activist found dead on 3 September 2000 near Medan in what is allegedly a known dumping ground for victims of the Indonesian military and police; and the abduction and beating of Muzakir and Mohamed Saleh, two student activists, on 19 September 2000 in Banda Aceh, allegedly by members of the Indonesian police intelligence force, POLRA.

72. The Special Representative sent an urgent appeal on 10 November 2000 together with the Special Rapporteur on torture regarding the arrest of Rusli and Sofyan, two volunteers with the People's Crisis Centre, on 7 November 2000. Reportedly arrested by the Police Mobile Brigade, the two individuals were said to be detained without charge and to be at risk of torture.

73. On 13 November 2000, the Special Representative transmitted a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning Aguswandi, an Acehnese human rights defender working for the Congress for Victims of Human Rights Violations, who has allegedly been subjected to death threats. According to the information received, members of the Police Mobile Brigade went to the office of a legal aid group on 3 November 2000 asking about Aguswandi's whereabouts. On the following day, Aguswandi reportedly managed to escape armed individuals in civilian clothes who were looking for him.

74. On 22 November 2000, the Special Representative, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture, the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on violence against women, transmitted a communication to the Government of Indonesia expressing her deep concern with regard to massive human rights violations occurring in the province of Aceh. Concerns were expressed with regard to a pattern of serious human rights violations targeting human rights defenders and conditions affecting the work of human rights

defenders making them vulnerable to, in particular, extrajudicial execution, acts of torture, including sexual violence, committed by the military and security forces; and numerous detentions without arrest warrants.

75. In this regard, a joint press release was issued on 22 November 2000 outlining the human rights violations against human rights defenders set out above. The Special Representative, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture, the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on violence against women, appealed to the Government of Indonesia to provide information regarding the reports of abuses and to ensure the right to life, the right to physical and mental integrity and the right to be free from arbitrary arrest and detention of the population of Aceh.

Observations

76. The Special Representative has not yet received a response from the Government.

Iran (Islamic Republic of)

Communication sent

77. On 7 November 2000, the Special Representative sent a communication requesting information about the sentencing on 27 September 2000 of Ms. Chirin Ebadi and Mr. Mohsem Rahami, two lawyers and human rights defenders, by the Court of Tehran. Both individuals were reportedly sentenced to a 15-month suspended sentence of imprisonment and a five-year revocation of their civil rights, including the practice of law. It has been reported that the trial was conducted without regard to the international standards for a fair trial.

Observations

78. The Special Representative awaits a reply from the Government.

Malaysia

Communication sent

79. The Special Representative transmitted a communication to the Government of Malaysia on 7 November 2000 regarding the trial of Irene Fernandez, a human rights activist and director of the Malaysian human rights organization Tenaganita. According to the information received, she has been charged with publishing "false news" in connection with a report published in 1995 in which she described grave violations against migrant workers in government detention camps. It has been reported that the trial of Ms. Fernandez was characterized by numerous irregularities, notably postponements, recesses and adjournments which make it the longest running criminal prosecution in Malaysia.

Observations

80. The Special Representative has not yet received a reply from the Government.

Tunisia

Communications sent

81. On 15 November 2000, the Special Representative sent an urgent appeal concerning Dr. Moncef Marzouki, spokesperson for the National Committee for Freedom in Tunisia. According to the information received, Dr. Marzouki had been called before a judge on 23 October 2000 and charged with belonging to a non-recognized organization, with defamation, and with propagating false news, allegedly in connection with a written contribution which he made to the Congress of Arab Human Rights Defenders in early October 2000. It has been reported that he faces up to 20 years' imprisonment. Moreover, Dr. Marzouki learned on 20 October 2000 that he is prohibited from leaving the country, a month after he was dismissed from his job as a professor of medicine at the University of Sousse.

82. On 29 November 2000, the Special Representative sent an urgent appeal to the Government of Tunisia to express her concern over the suspension of the new executive of the Tunisian League for Human Rights. According to the source, on 27 November 2000 a Tunis court suspended the League's activities following a complaint by four members, known to be close to the authorities, that elections to the organization's governing body at the end of October had been unfair. It was also reported that the Tunisian authorities were watching the League's offices and that the members, employees and individuals working with the League could be arrested and charged for their activities with this organization.

Observations

83. No reply from the Government has been received so far.

United Kingdom of Great Britain and Northern Ireland

84. The Special Representative has received recent allegations from various sources regarding the situation of human rights defenders in Northern Ireland. Concerns have been raised regarding the continued lack of an independent public inquiry into the murder of lawyer Patrick Finucane in 1989 and regarding the investigation into the assassination of solicitor Rosemary Nelson on 15 March 1999. The Special Representative acknowledges the work done in this area by the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on freedom of opinion and expression. She would encourage the Government of the United Kingdom of Great Britain and Northern Ireland to implement the recommendations made on these issues by the two mechanisms of the Commission on Human Rights.

V. CONCLUDING REMARKS

85. Significant advances have been made in recent years in creating or strengthening legal and normative frameworks for the protection of human rights defenders in many parts of the world. However, one recurrent problem remains the lack or inefficient implementation of these norms in practice. The Special Representative is particularly eager to develop strong working relationship with mechanisms established at the national or subregional level with a view to promoting and protecting human rights. Similarly, she will seek to study the legislation and jurisprudence of Member States with a view to defining, in a progressive manner, a set of "good experiences or practices" which she will share with governmental or non-governmental partners. Lastly, she will also seek innovative forms of cooperation in promoting the rights of human rights defenders, including in the area of dissemination of information and awareness-building.

86. The Special Representative is deeply concerned at the considerable number of communications she has already received that allege serious violations targeting human rights defenders throughout the world. In particular, the Special Representative is concerned that a variety of repressive trends, measures and practices persist which threaten the freedom of action of human rights defenders. No region is free of these trends. While the sources of support for human rights defenders have been slow to emerge, the quarters from which the threats emanate are growing fast. The failure of States to offer effective guarantees against the violation of fundamental rights has given a more critical dimension to issues of human security. Disparities in economic, social and political empowerment emphasize the need for groups and individuals who strive to facilitate the exercise of rights by others. It is an unfortunate reality that the role of human rights defenders is not recognized or accepted by Governments in many parts of the world. State apparatus, oppressive laws and other tools of repression continue to be used against defenders in attempts to deter them from the valuable work they contribute to the promotion of human rights.

87. Reports submitted by some of the special procedures mechanisms at the fifty-fifth and fifty-sixth sessions of the Commission on Human Rights indicated the serious nature of the risks faced by human rights defenders. The Special Representative wishes to recall cases brought to the attention of the Commission in order to emphasize the need for strong and effective measures for the protection of defenders. These reports also brought to light trends and practices being used to affect adversely the promotion of human rights.

88. The Working Group on Arbitrary Detention reported cases of 15 human rights defenders from eight countries (see E/CN.4/1999/63 and Add.1; E/CN.4/2000/4 and Add.1 and 2). The Special Rapporteur on the independence of judges and lawyers expressed concern at information received in 34 cases from 16 countries regarding the violation of rights to which human rights defenders were being subjected (see E/CN.4/1999/60; E/CN.4/2000/61 and Add.1). The Special Rapporteur on freedom of opinion and expression expressed concern regarding the cases of 18 defenders in 8 countries (see E/CN.4/1999/64; E/CN.4/2000/63 and Add.1, 3 and 4). Reports of the Working Group on Enforced or Involuntary Disappearances contained information on cases of 13 defenders in 7 countries (see E/CN.4/1999/62 and Add.1 and 2; E/CN.4/2000/64). The Special Rapporteur on extrajudicial, summary and arbitrary executions reported on violence and threats of violence faced by 21 human rights defenders in 11 countries (see E/CN.4/1999/39 and Add.1; E/CN.4/2000/3 and Add.2 and 3). The Special Rapporteur on torture reported on

cases of 61 defenders from 21 countries (see E/CN.4/1999/61 and Add.1; E/CN.4/2000/9 and Add.1 and 4). These were cases that these special procedures could take up within their mandates. There are several more who are not covered by these mandates and who are consistently being subjected to oppressive practices which have serious consequences that diminish prospects for the promotion and protection of human rights in many parts of the world.

89. The measure of success of the work of the Special Representative would be the degree of security that this mechanism can instil in those acting for the promotion and protection of human rights. To achieve the purpose for which the mandate has been established the Special Representative considers the following as requiring her special attention:

(a) The activities of armed groups, sponsored by the State or acting independently, as well as those of military, paramilitary or other security groups, have become a major threat to the exercise of human rights and fundamental freedoms. These groups pose a major threat to the security of human rights defenders and are directly or indirectly undermining or jeopardizing their work. This well-known factor will need specific consideration within the framework of this particular mandate. The experience gained by other special procedures, by treaty bodies or by OHCHR field presences (see E/CN.4/2000/11) will be of great assistance in identifying the main issues to be dealt with, the objectives which the Special Representative may reasonably wish to achieve and the specific strategies which would have to be developed to reach them;

(b) As mentioned above, the rights to freedom of association, assembly and movement are not specifically covered by any particular thematic mandate. It is urgent to undertake a comprehensive review of the implementation of the Declaration in this area and dwell in an appropriate manner on the investigation of individual cases;

(c) One of the main characteristics of the Declaration is to address defenders as a group or as individuals with specific rights and freedoms. It is important to study the repressive measures faced by the defenders as groups, as well as the risks they face as individuals active in the promotion and protection of civil, cultural, economic, political and social rights;

(d) The Special Representative intends to pay particular attention to devising appropriate strategies for the implementation of the Declaration's provisions relating to the protection of human rights activists seeking democratic transformation and reacting against or opposing, through peaceful means, acts resulting in violation of human rights;[8]

(e) Human rights defenders may be targeted in many different ways, including by the enactment of laws criminalizing certain aspects of human rights activity, or for exercising their freedoms of association, assembly, information and movement. Regulatory frameworks may be imposed to limit their freedom of association or restricting the scope of activities by non-governmental organizations. This structural threat to the activities of human rights defenders will need specific attention in the work of the Special Representative and, accordingly, she will coordinate and compile any such legislation or regulatory framework with a view to drawing lessons from them and formulating appropriate recommendations to overcome their negative consequences insofar as the enjoyment of the rights set forth in the Declaration is concerned;

(f) The situation of human rights defenders subjected to prosecution and judicial investigation under such laws and their sentencing after unfair trials will be a matter of serious concern for the Special Representative. It will be of particular importance to determine what measures or steps should be contemplated by the Special Representative in cooperation with Member States with a view to looking into the matter, drawing specific conclusions and recommending remedial measures to the concerned authorities, including forms of compensation;

(g) Greater risks are faced by defenders of the rights of certain groups as their work challenges social structures, traditional practices and interpretations of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups. Of special importance will be women's human rights groups and those who are active on issues of sexuality, especially sexual orientation and reproductive rights. These groups are often very vulnerable to prejudice, to marginalization and to public repudiation, not only by State forces but by other social actors. The Special Representative will undertake or encourage studies of any such phenomena with a view to drawing up a compendium of possible measures to enhance the protection of such human rights defenders;

(h) As was made clear in the context of the adoption of the Declaration and the setting-up of this mandate, reprisals and repressive measures may be taken against individuals and groups who have reported alleged human rights abuse to international bodies, including the United Nations human rights mechanisms. It is the intention of the Special Representative to explore such matters further since occurrences of such violations are detrimental to the activities of procedures which are at the core of the United Nations human rights mechanisms;

(i) Lastly, the Special Representative will pay attention to the long-standing issue of states of emergency and the ensuing occurrence of impunity insofar as they affect the activities of human rights defenders. In several countries, appropriate human rights legislation may have been enacted long ago without being properly implemented because of an almost continuous state of emergency. The extent to which such legislation may be of relevance in the consideration of the rights of human rights defenders will need to be examined with attention.

90. The Special Representative is of the view that effective implementation of the mandate depends upon the availability of adequate human and material resources. The mandate, as created by the Commission on Human Rights, does not have financial implications which presupposes that it relies on extrabudgetary funds. Without appropriate resources, the expectations raised by this mandate will not be satisfied and it will be difficult for the Special Representative to carry out her work thoroughly and with the necessary degree of efficiency.

91. The Special Representative is required by the mandate to recommend effective strategies to better protect human rights defenders and to follow up these recommendations. Appraisals, situational analyses and research are necessary for this purpose. Areas for this activity have been identified, and the Special Representative shall make every effort to complete the initial studies and present her recommendations to the Commission and the General Assembly in her subsequent reports.

Notes

[1] See reports of the Secretary-General to the Commission on Human Rights (E/CN.4/2000/95) and to the General Assembly (A/55/292) submitted pursuant to Commission resolution 1999/66 and General Assembly resolution 54/170, respectively.

[2] "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."

[3] "The General Assembly ... acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources."

[4] "1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

"2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

"3. To the same end, everyone has the right, individually and in association with others, inter alia:

"(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

"(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

"(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms."

[5] In this regard, reference is made to the final report of the independent expert, Mr. M. Cherif Bassiouni, submitted in accordance with Commission resolution 1999/33 on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/2000/62) and its annex, entitled "Basic principles and guidelines on the right of victims to a remedy and reparation for victims of violations of international human rights and humanitarian law".

[6] In particular, in the course of examining States parties' human rights situations, treaty bodies have placed emphasis on the fact that intimidation and oppression of human rights defenders might give rise to impunity for the perpetrators of human rights violations. In the concluding observations adopted following its examination of one report, the Human Rights Committee underlined, for instance, that the repeated instances of intimidation of judges, prosecutors, witnesses, victims and their relatives, human rights activists and journalists largely accounted for the absence of decisive action by the bodies that should investigate and try crimes and for the continuance of impunity. On another occasion, it also pointed out that members of various social sectors, particularly members of the judiciary, lawyers, journalists, human rights activists, members of trade unions and members of political parties, were subject to intimidation, death threats and even murder, thus facing serious obstacles in the legitimate performance of their duties. The Committee deplored that effective measures had not yet been taken to prevent the recurrence of such acts. It went on to urge the Government concerned to take all necessary steps, including protective and pre-emptive measures, to ensure that members of various social sectors, particularly members of the judiciary, lawyers, journalists, human rights activists, members of trade unions and members of political parties, were enabled to perform their duties without intimidation of any sort. With respect to article 22 of the Covenant, the Committee also had the opportunity to express its concern about the difficulties arising from the registration procedures to which non-governmental organizations and trade unions were subjected. The Committee also expressed concern about reports of cases of intimidation and harassment of human rights activists by the authorities, including their arrest and the closure of the offices of certain non-governmental organizations. In that regard, the Committee, reiterating that the free functioning of non-governmental organizations was essential for the protection of human rights and the dissemination of information in regard to human rights among the people, recommended that laws, regulations and administrative practices relating to their registration and activities be reviewed without delay in order that their establishment and free operation might be facilitated in accordance with article 22 of the Covenant.

[7] Another instance of possible cooperation can be found in the procedure established by the United Nations Educational, Scientific and Cultural Organization in accordance with decision 3.3. adopted by the Executive Board at its one hundred and fourth session in 1978 through which the Committee on Conventions and Recommendations, a subsidiary body of the organization's Executive Board, examines complaints concerning alleged violations of human rights falling within UNESCO's fields of competence, namely education, science, culture and information. The right to information, including freedom of opinion and expression (Universal Declaration, art. 19), and the right to education are of particular relevance to the Special Representative's effort to implement her mandate and victims of the violations of these two categories of rights are often themselves human rights defenders, including researchers, writers, journalists and intellectuals who seek to promote and protect human rights.

[8] See article 18 of the Declaration on Human Rights Defenders:

"1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

"2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

"3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized."

Annex I*

NOTE VERBALE DATED 17 NOVEMBER 2000 FROM THE PERMANENT MISSION OF CUBA TO THE UNITED NATIONS OFFICE AT GENEVA ADDRESSED TO THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL

The Permanent Mission of the Republic of Cuba to the United Nations Office and International Organizations with Headquarters in Switzerland presents its compliments to the Special Representative of the Secretary-General on human rights defenders and, with reference to its note G/SO 214 (107), prepared in accordance with Commission on Human Rights resolution 2000/61, has the honour to forward the comments of the Government of the Republic of Cuba.

As you may know, the Government of Cuba opposed the proposal to appoint a Special Representative of the Secretary-General on human rights defenders, because the countries promoting the initiative upset a delicate balance reached after years of intense negotiations and even disregarded the outcome of the consultations on the subject.

The Government of Cuba wishes to point out that the adoption by consensus of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms was possible only after many years of negotiation. Moreover, the process was not successful in achieving all the proposed objectives. In the end, the issue of defining the responsibilities of individuals and groups towards the societies in which their rights can be realized was never settled.

When the Declaration was adopted by the General Assembly, an interpretative declaration was drawn up on behalf of 26 delegations, including that of Cuba, and was circulated as an official United Nations document (A/53/679).

The Government of Cuba would like to reiterate some of the ideas contained in that document:

1. Only the State can adopt legal, legislative and administrative guarantees to ensure that all persons under its jurisdiction are able to enjoy those rights and freedoms.

2. The implementation of the Declaration and international cooperation in promoting that objective should be in full conformity with the Charter of the United Nations, particularly with:

   (a) Respect for the sovereignty of States and their territorial integrity;

   (b) Non-interference in the internal affairs of States.

3. The rights and obligations stipulated in the Declaration should be exercised in full conformity with domestic law, which is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the Declaration should be conducted.

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* Reproduced in English and Spanish only.

4. Recourse to international human rights mechanisms is a supplementary right that presupposes that all domestic remedies have been exhausted.

5. Funding for activities to promote and protect human rights must comply fully with the domestic law of the State concerned.

The above ideas are all still valid, particularly when the aim is clearly to exploit the promotion and protection of human rights for the purpose of "legitimizing" intervention and interference in the internal affairs of developing countries.

There are many reasons for Cuba's concern about the dominant trends taking shape in the implementation of the Declaration, including:

1. There has been an attempt to use the term human rights "defenders" only when referring to the implementation of the Declaration, to the exclusion of other important international human rights instruments such as the Declaration on the Right to Development.

2. There has been an attempt to consider only individuals and non-governmental organizations as belonging to the category of human rights defenders, to the exclusion of State activities. According to this logic, there would appear to be no States that are defenders of human rights. Peoples, as a social category, would also appear to be ineligible for inclusion in the category of defenders, so that the peoples of the South who are working to realize their right to development could apparently not be described as defenders.

3. Reflecting the bias of one group of countries with regard to the various categories of human rights, the title of "defenders" is used almost exclusively where the activity relates to the promotion and protection of civil and political rights.

The term "defenders" is not applied to those non-governmental organizations working to defend the right to a healthy environment - they are merely "environmental organizations" and the organizations defending the rights of indigenous peoples are just "indigenous organizations".

4. Where developing countries are concerned, it is argued that defenders must, by definition, be members of the political opposition to the Government, especially in cases where the Government does not fit in with the major Western Powers' geopolitical control models.

Attempts are made to impose the view that no Government in the South really represents the will of the people. Even then, non-governmental organizations whose work is in line with governmental policies and programmes are accused of siding with the Government or simply of being its agents.

It can nevertheless not be forgotten that the description applied by the Western media monopolies to many genuine human rights defenders from the peoples of the South who were forced to rebel against the military dictatorships imposed on them with the support of the major world Power was not "human rights defenders", but "Marxist rebels" or even "terrorists".

5. Some non-governmental organizations from the North working in the field of civil and political rights can be seen to be claiming a monopoly on the worldwide representation of so-called defenders, hindering access to international decision-making bodies by thousands of grass-roots and local organizations from the countries of the South.

6. Outside funding for the activities of so-called human rights defenders still shows clear patterns of selectivity and political manipulation and is sometimes a front for the funding of activities that are incompatible with the Charter of the United Nations.

In the case of Cuba, the term "human rights defender" should be applied first and foremost to the people as a whole: it is fighting for its right to life, development and self-determination in the face of political genocide in the form of the hostility and embargo to which it is subjected by the Government of the United States of America.

The United States Government, while cutting off the Cuban people from the resources it needs to buy, such as food and medicine, has finally acknowledged publicly that it has used federal funds to finance counter-revolutionary groups in Cuba.

Attempts are made to present these groups, which are set up, funded and controlled by the United States Government and by the Miami-based mafia of Cuban origin, as human rights defenders to try to create the impression that there is internal political opposition in Cuba and thereby make it easier to "justify" their aggression against the Cuban people.

This criticism of the trends and dangers outlined above does not mean that the Government of Cuba is unaware of the importance of protecting individuals and groups which are being persecuted all over the world and even risking their lives for the cause of human rights.

The victims of summary and arbitrary executions, disappearances, arbitrary detention, all forms of racism, racial discrimination, xenophobia, foreign occupation and domination, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism and discrimination against women, as well as all those fighting to eradicate those practices and to promote a world where peace, justice and development are given priority, will have Cuba's full respect and support.

Cuba was a fervent proponent of the idea that the follow-up to and implementation of the Declaration should be carried out in a comprehensive and inclusive manner, in fulfilment of the mandates of all the arrangements and procedures of the United Nations human rights mechanisms and not through the creation of a new mechanism that could be politically manipulated and used selectively and in a discriminatory fashion against the countries of the South.

Now that the mechanism is in place, Cuba, despite its opposition, welcomes the fact that the mandate has been entrusted to someone from the South and believes it has a duty to bring the above points to her attention.

Annex II*

LETTER DATED 5 JANUARY 2001 FROM THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL TO THE PERMANENT REPRESENTATIVE OF CUBA TO THE UNITED NATIONS OFFICE AT GENEVA

I would like to thank you for your comments in response to my note verbale dated 10 October 1999. I appreciate the openness with which you have expressed your Government's position on the creation of the mechanism of the Special Representative of the Secretary-General on human rights defenders. You have raised serious issues with regard to the implementation of the mandate entrusted to me, and I welcome this opportunity to initiate a meaningful dialogue between your Government and myself for a clearer understanding of the mandate.

I am happy to note that in some aspects we share a common understanding that could help us to agree on the scope of the mandate. In my view the term "human rights defenders" is not restricted only to those seeking protection and promotion of civil and political rights. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms recognizes those striving for the promotion, protection and realization of social, economic and cultural rights as human rights defenders. Therefore, those defending the right to a healthy environment, or promoting the rights of indigenous peoples would, by no means, fall outside the ambit of any definition of a human rights defender.

The Declaration reaffirms the importance of human rights instruments adopted within the United Nations system (preambular paragraphs 2 and 6, articles 4, 14 and 18). There is, therefore, no reason to assume that provisions of the Declaration on the Right to Development, where relevant, would be excluded from consideration under this mandate.

You have mentioned the interpretative declaration drawn up on behalf of 26 delegations, and have reiterated some of the ideas in that document. There can be no argument with the position that only the State can adopt legal, legislative and administrative guarantees, in conformity with international standards, to ensure that all persons under its jurisdiction are able to enjoy those rights and freedoms. It is, however, a responsibility of the international community to urge and persuade States to fulfil this important obligation, and to take note of situations where enjoyment of these rights and freedoms are impeded by acts or omissions of the State. In this context there can be no doubt about the legitimacy of international concern on situations adversely affecting the enjoyment of human rights.

No doubt, issues of national sovereignty and territorial integrity could be a concern in several aspects of international relations. However, it is difficult to understand how promotion and protection of human rights, and concern regarding violation of these rights, infringe upon the concept of State sovereignty or pose a threat to the territorial integrity of a State. It is,

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nevertheless, true that the international community can promote and protect human rights only by means that are transparent and based on respect for the aspirations of the people for whose protection any concern is expressed. Special procedures of the United Nations human rights system are created by Member States, and this aspect is carefully built into the working of the mechanisms. Therefore, I see no cause for apprehension in this regard or for a lack of confidence in the implementation of any of the mandates of these procedures.

On the other hand, it is disturbing that whenever attention is drawn to the conduct of any State that amounts to violation of human rights, any expression of concern is rejected as interference in the internal affairs of the State or an infringement of the sovereignty of the State. The tendency of States to use such arguments in order to avoid accountability for human rights abuse must be discouraged if effective modes of complying with human rights standards are to be established within the United Nations system. I hope that Member States will jointly endeavour to do so.

I am unable to agree with your interpretation of the juridical framework prescribed in the Declaration for the implementation and enjoyment of human rights and fundamental freedoms. While domestic law in conformity with the Charter of the United Nations constitutes the juridical framework, it has to be read with article 4 of the Declaration. There is no scope for an interpretation of these provisions which implies that recourse to international human rights mechanisms is a supplementary right which presupposes that all domestic remedies have been exhausted.

I am aware that the question of funding for activities for promotion and protection of human rights has emerged as an issue of concern. Non-governmental organizations, particularly those working for human rights, are increasingly being subjected to limitations that would affect their capacity and outreach. International cooperation for the promotion of human rights implies that both the State and civil society should have access to resources for this important activity. Restrictions on receiving funds by human rights organizations have often been imposed as a measure to impede their activities for the protection of human rights. States have often raised this as an issue of national security, independence or sovereignty. Any apprehension in this regard seems to be misplaced, simply because the nature of the activity must determine its validity and genuineness. Promotion of human rights and fundamental freedoms of the people, in whose name the State claims sovereignty, can hardly be seen as a threat to the State.

One of Cuba's concerns about the dominant trends taking shape in the implementation of the Declaration is that States are excluded from being considered as "defenders". Without going into any lengthy arguments on the role of the State, I would like to draw your attention to article 2 of the Declaration which places the prime responsibility and duty for the protection, promotion and implementation of all human rights on the State, by offering effective guarantees for enjoyment of these rights. In this context it would be more appropriate for the State to consider itself as a "guarantor" of rights and to take all possible measures to fulfil this obligation.

As I do not see some of the dangers and trends you perceive and criticize as relevant to my mandate, no useful purpose may be served by any mandate on my part to respond to these. I may, however, state that this is a mandate for the protection of the right, individually and in association with others, to promote, protect and strive for the realization of human rights and

fundamental freedoms at the national and international levels (article 1 of the Declaration and General Assembly resolution 53/144). It will be used for the protection of defenders wherever the situation so demands. The mandate is concerned with the elimination of oppressive trends and practices and seeks to mitigate any threats to those striving for the implementation of human rights. It would not be fair to presume its implementation to be biased against or in favour of any region.

Cuba's recognition of the importance of protecting individuals and groups who strive for the cause of human rights despite the persecution and grave risks they face is appreciable. I am greatly encouraged by your Government's assurance of full respect and support for victims of human rights violations, as well as for those who strive for the eradication of such practices. Cuba's support and respect, founded on the recognition that activities for the elimination of human rights violations will lead to a world order where peace, justice and development are given priority, gives me greater hope that Cuba will be able to overcome its reservations on the setting-up of this mechanism.

Let me assure you, Excellency, of my keenness to continue a constructive discussion on these issues.